

Position of the Unite Hospitality & Tourism Branch

Payment of Wages (Amendment) (Tips and Gratuities) Bill

INTRODUCTION

The Unite Hospitality and Tourism Branch welcomes all attempts to improve workers' rights. The planned legislation is a genuine opportunity to address clear wrongs and widespread abuses in the sector. Consideration of the points made below would help ensure that new legislation is effective in preventing the theft of tips that are intended for workers.

A recent survey undertaken by Unite, along with previous research carried out by Dr Deirdre Curran of NUI Galway, found that most workers in the sector are low paid, many have experienced abuse in the workplace and many more lack implementation of their basic workers' rights while a significant number of workers reported not knowing what their rights are. One respondent to Unite's survey even told how he was threatened with dismissal for asking how tips were calculated, stating:

"I'm absolutely disappointed at the fact that there are no laws which can stop owners and managers from collecting tip money from staff."

This new legislation being introduced by the Minister for Enterprise, Trade and Employment is necessary to protect those most vulnerable in this notoriously low paid sector, an industry which provides employment for a significant percentage of young people, students, females, and migrant workers for whom English is very often not a first language. Moreover the sector is predominately un-unionised which, while ideologically suitable to many, leads to a situation where many workers have no idea as to their most basic rights.

The Tánaiste and the current government have committed to moving towards a living wage in the Programme for Government. Hospitality workers are low paid in many cases. Customer gifts/tips are an accepted feature of the sector. Workers in hospitality and tourism often do not even receive their basic legal entitlements such as holiday pay, Sunday premium, rest breaks, bank holiday pay etc. This lack of basic workers' rights is a blight on an industry that is a fundamental part of the Irish economy.

There is an opportunity here for the Minister to right a major wrong in the sector. To do otherwise by creating a legal right to service charges for employers (not workers), to give employers control of credit card tips, while giving no reassurance of staff receiving cash tips not only fails to take an opportunity to address a blatant wrong, but it would give theft a legislative basis that simply cannot be sustained.

What are Tips?

Tips are a gift from the customer to the establishment staff.

Where a customer goes to the trouble of gifting a tip to the workers of an establishment the legislation must reflect the absolute reality that NO CUSTOMER has ever intended a gift/tip to be given to bypass the staff and been appropriated by the employer/business owner. The gift/tip is always intended for the staff and the proposed legislation must reflect this. An establishment's profit is already calculated in their pricing and that is how any other sector covers their business costs too. It is difficult to believe that any customer, anywhere and in any scenario, voluntarily gives additional money to increase the income of the employer. It doesn't happen. It is not ever the customer's intent to do so. A tip is a gift to workers for their service and should be treated as such in practice, in legislation, and in taxation.

We need to see an end to a regime where these customer gifts are routinely taken by employers and used, in effect stolen, for their personal and business needs while the intended recipient, the usually low paid worker, is denied the full (or any benefit) of the customer's appreciation. Customers have the right to decide who they gift/tip their money to. Not a single customer ever meant their tip to be taken and pocketed by an employer/owner. It is safe to say that customers in any sector would never choose to pay business more for the service provided, profit already having been included in the prices established by a business. Why then, is this legislation still leaving an open door for dishonesty and abuse of workers and customers?

This is wrong and dishonest and represents a fraud on both the gifting customer and the workers concerned. We cannot accept that it is the intent of the Minister to further facilitate, and in fact give legal cover, to this practice of theft. This legislation provides an opportunity for the Minister and legislature to right a blatant wrong in the sector and assist low paid workers just as customers giving gifts/tips intend. Simply put, the legislation must match the intent of the customer to provide a gift to the staff in the sector when tipping.

A SHORT EXAMPLE – 'The Ivy', Dublin

In a recent public hearing of The Labour Court, 'The Ivy' gave evidence as to how its business model is specifically designed in a manner that appropriates customer gifts/tips to pay contracted wages.

Since the opening of the restaurant, 'The Ivy' changed its policy and original agreement with its staff several times. It took 'The Ivy' just a couple of months from opening in the ROI to see the opportunity to use all credit card gifts/tips and service charges to top up the difference between minimum and contractual wages. 'The Ivy' evidence in the Labour Court confirms that it has introduced a service charge on every table which significantly impacts negatively on the amount of other gifts/tips left for workers. Based on this experience, customers assume that a service charge is no different than a tip and presume that this charge is passed on to the worker, hence they are very unlikely to leave any additional tips. It is important to note that the amount of money taken in service charges on a busy day at 'The Ivy' runs into many thousands of Euro. The wages of workers here are slightly above the minimum wage, however, this difference is being paid from customer gifts/tips despite the fact that the customer is at no point made aware of this. What the customer intends as a gift/tip to supplement staff income is in fact being misappropriated by the employer and used to pay contracted wages.

Again, there is a real need for this legislation to reflect the intent of the customer making a gift/tip.

SERVICE CHARGES

As seen above, when an establishment implements a service charge under current legislation this charge can be used as part of business revenue and can even be used to pay salaries and other business costs. Customers don't realise this and wrongly assume that a service charge is a form of a gift/tip, separate from the worker's wage.

Gifts of cash, on credit cards or in service charges are all intended by customers for employees. The use of the term "service charge" clearly indicates that, from the customer and worker's perspective, this money is intended for the server's 'service' and is understood by most people to mean that. Alarming, the current proposal maintains its current format stating, *'that service charges levied by a business (as distinct from tips and gratuities) are*

part of business revenues and as such can be applied to meet all business costs, including salaries.

This is an aberration and, in respect of service charges, completely destroys the intent of the customer. **This should be changed.** In the event that this is not done, the proposal to display the policy of the establishment regarding tips and service charges is welcomed but it must be mandatory, very clear and be open to inspection and penalties for non-compliance. At a very minimum all customers have the right to know what happens to their gift/tips and what a service charge is used for if it's not for staff.

RED HERRINGS – SHARING TIPS AND TAXATION

It is abhorrent that previous considerations of this issue, including by the Low Pay Commission, allowed the theft of customer gifts/tips to continue using taxation revenue as an excuse. Tips given to workers must be taxed for what they are and what everybody including the legislature and the Low Pay Commission know they are, gifts from grateful customers to establishment staff. Tips are not taxable income, or assured and sustainable income, and are not seen as such by banks or lending institutions which would not consider any loan or mortgage based on these gifts/tips.

The recent research found that the practice of tip theft by employers is, and has been, common in the sector. However, there were no concerns about tax previously. Tax only ever gets raised when efforts to prevent theft by establishments are made. It seems ironic that tax revenue is used as a shield to continue and support ongoing theft given the legislative denial of protection on cash tips.

Gifts/tips whether in the form of cash or on credit cards should, like any other gift below €3000, be tax free and workers should have the right to receive them fully and be in control of the way they are shared. This money is not, and never was, intended for business owners and for this reason employers should not be making any decisions or have any control of the gift/tip given in good faith by grateful customers. Factors like experience, qualification and length of service should be reflected in wages and not by percentage of tips distributed or not by employers who should have no control of customer gifts/tips. Any inconvenient (and we suggest contrived) tax considerations can be simply avoided by defining tips for what they are in reality - a gift from customers to staff.

Finally, there is no issue with staff sharing these gifts as they are originally meant as gifts to them. Staff throughout the sector routinely and voluntarily do this where they are provided the freedom to do so. To suggest otherwise, as employer groups do, is a red herring introduced by those engaged in theft to diminish their workers in order to facilitate that theft.

There is absolutely no evidence of workers not sharing gifts/tips but there is plenty of evidence of employers stealing them. Why are red herrings like 'tax' and non-sharing by workers of gifts/tips created and used to maintain and facilitate this theft? This legislation provides a real opportunity for the Minister to do considerable good by remedying this clear issues and wrongs.

SUMMARY

- Hospitality and Tourism is a sector of predominantly low pay and precarious work
- There is a preponderance of young, female and migrant workers who need support
- Not to provide that support is not only damaging to the individuals involved but to the sustainability of the sector and the role of sector workers in the wider economy
- Tips (whether through service charges, credit cards or cash) are an established and necessary part of such a low paid sector
- Tips are always intended as gifts from customers to staff
- Tips are never intended to supplement the profits of owners
- Tips are often being misappropriated/taken by owners from workers as 'tip theft'
- This is a fraud on both workers and customers
- Legislation must reflect customers' wishes/intent and protect workers
- These tips should be taxed as what they are – gifts from customers to workers
- Customers must know how their gift is being handled/used by clear notification
- There must be an improved regime of workplace inspections with clear and serious penalties for employers engaging in tip theft and/or customer deception

Unite Hospitality Branch
January 2022

Unite the Union : January 2022